



General Assembly

Substitute Bill No. 5348

February Session, 2010

* ____HB05348GAE__032610__ *

**AN ACT IMPLEMENTING ADDITIONAL RECOMMENDATIONS OF THE
PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING RETALIATION FOR WHISTLEBLOWER COMPLAINTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-61dd of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2010*):

4 (a) (1) Any person having knowledge of any matter involving
5 corruption, unethical practices, violation of state laws or regulations,
6 mismanagement, gross waste of funds, abuse of authority or danger to
7 the public safety occurring in any state department or agency or any
8 quasi-public agency, as defined in section 1-120, or any person having
9 knowledge of any matter involving corruption, violation of state or
10 federal laws or regulations, gross waste of funds, abuse of authority or
11 danger to the public safety occurring in any large state contract, may
12 transmit all facts and information in such person's possession
13 concerning such matter to the Auditors of Public Accounts. The
14 Auditors of Public Accounts shall review such matter and report their
15 findings and any recommendations to the Attorney General. Upon
16 receiving such a report, the Attorney General shall make such
17 investigation as the Attorney General deems proper regarding such
18 report and any other information that may be reasonably derived from
19 such report. Prior to conducting an investigation of any information

20 that may be reasonably derived from such report, the Attorney
21 General shall consult with the Auditors of Public Accounts concerning
22 the relationship of such additional information to the report that has
23 been issued pursuant to this subsection. Any such subsequent
24 investigation deemed appropriate by the Attorney General shall only
25 be conducted with the concurrence and assistance of the Auditors of
26 Public Accounts. At the request of the Attorney General or on their
27 own initiative, the auditors shall assist in the investigation. The
28 Attorney General [shall have power to] may summon witnesses,
29 require the production of any necessary books, papers or other
30 documents and administer oaths to witnesses, where necessary, for the
31 purpose of an investigation pursuant to this section or for the purpose
32 of investigating a suspected violation of subsection (a) of section 17b-
33 301b until such time as the Attorney General files a civil action
34 pursuant to section 17b-301c. Upon the conclusion of the investigation,
35 the Attorney General shall where necessary, report any findings to the
36 Governor, or in matters involving criminal activity, to the Chief State's
37 Attorney. In addition to the exempt records provision of section 1-210,
38 the Auditors of Public Accounts and the Attorney General shall not,
39 after receipt of any information from a person under the provisions of
40 this section or sections 17b-301c to 17b-301g, inclusive, disclose the
41 identity of such person without such person's consent unless the
42 Auditors of Public Accounts or the Attorney General determines that
43 such disclosure is unavoidable, and may withhold records of such
44 investigation, during the pendency of the investigation.

45 (2) The Auditors of Public Accounts and the Attorney General shall
46 each post on their agency Internet web sites a summary of all matters
47 investigated by their agencies. Such summary shall include, but not be
48 limited to, a listing of the number of complaints for each state agency,
49 quasi-public agency or large state contractor, a description of the type
50 of allegations made, the date each such matter was referred to the
51 auditors or Attorney General and the status and disposition of each
52 such matter, including whether the allegation has been substantiated
53 in whole or in part and whether the agency or large state contractor

54 has attempted to take any corrective action. Such summary shall be
55 updated every six months.

56 (b) (1) No state officer or employee, as defined in section 4-141, no
57 quasi-public agency officer or employee, no officer or employee of a
58 large state contractor and no appointing authority shall take or
59 threaten to take any personnel action against any state or quasi-public
60 agency employee or any employee of a large state contractor in
61 retaliation for (A) such employee's [or contractor's] disclosure of
62 information to [(A)] (i) an employee of the Auditors of Public Accounts
63 or the Attorney General under the provisions of subsection (a) of this
64 section; [(B)] (ii) an employee of the state agency or quasi-public
65 agency where such state officer or employee is employed; [(C)] (iii) an
66 employee of a state agency pursuant to a mandated reporter statute or
67 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
68 large state contractor, an employee of the contracting state agency
69 concerning information involving the large state contract; or (B) such
70 employee's testimony or assistance in any proceeding under this
71 section.

72 [(2) If a state or quasi-public agency employee or an employee of a
73 large state contractor alleges that a personnel action has been
74 threatened or taken in violation of subdivision (1) of this subsection,
75 the employee may notify the Attorney General, who shall investigate
76 pursuant to subsection (a) of this section.]

77 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
78 specific incident giving rise to a claim that a personnel action has been
79 threatened or has occurred in violation of subdivision (1) of this
80 subsection, a state or quasi-public agency employee, an employee of a
81 large state contractor or the employee's attorney may file a complaint
82 against the state agency, quasi-public agency, large state contractor or
83 appointing authority concerning such personnel action with the Chief
84 Human Rights Referee designated under section 46a-57. Such
85 complaint may be amended if an additional incident giving rise to a
86 claim under this subdivision occurs subsequent to the filing of the

87 original complaint. The Chief Human Rights Referee shall assign the
88 complaint to a human rights referee appointed under section 46a-57,
89 who shall conduct a hearing and issue a decision concerning whether
90 the officer or employee taking or threatening to take the personnel
91 action violated any provision of this section. [If] The human rights
92 referee may order a state agency or quasi-public agency to produce (i)
93 an employee of such agency or quasi-public agency to testify as a
94 witness in any proceeding under this subdivision, or (ii) books, papers
95 or other documents relevant to the complaint, without issuing a
96 subpoena. If such agency or quasi-public agency fails to produce such
97 witness, books, papers or documents, the human rights referee may
98 consider such failure as supporting evidence for the complainant. If,
99 during the pendency of the hearing, the human rights referee has
100 reasonable cause to believe that any officer or employee has taken
101 personnel action in violation of subdivision (1) of this subsection, such
102 referee may order temporary equitable relief, including, but not
103 limited to, an order reinstating the person filing the complaint to the
104 same position held before such personnel action was taken. If, after the
105 hearing, the human rights referee finds [such] a violation, the referee
106 may award the aggrieved employee reinstatement to the employee's
107 former position, back pay and reestablishment of any employee
108 benefits for which the employee would otherwise have been eligible if
109 such violation had not occurred, reasonable attorneys' fees, and any
110 other damages. For the purposes of this subsection, such human rights
111 referee shall act as an independent hearing officer. The decision of a
112 human rights referee under this subsection may be appealed by any
113 person who was a party at such hearing, in accordance with the
114 provisions of section 4-183.

115 (B) The Chief Human Rights Referee shall adopt regulations, in
116 accordance with the provisions of chapter 54, establishing the
117 procedure for filing complaints and noticing and conducting hearings
118 under subparagraph (A) of this subdivision.

119 [(4) As an alternative to the provisions of subdivisions] (3) Any state
120 or quasi-public agency employee or large state contractor employee

121 who has not pursued a remedy under subdivision (2) [and (3)] of this
122 subsection may, in the case of: (A) A state or quasi-public agency
123 employee who alleges that a personnel action has been threatened or
124 taken, [may] file an appeal not later than [thirty] ninety days after
125 learning of the specific incident giving rise to such claim with the
126 Employees' Review Board under section 5-202, or, in the case of a state
127 or quasi-public agency employee covered by a collective bargaining
128 contract, in accordance with the procedure provided by such contract;
129 or (B) an employee of a large state contractor alleging that such action
130 has been threatened or taken, [may,] after exhausting all available
131 administrative remedies, bring a civil action in accordance with the
132 provisions of subsection (c) of section 31-51m.

133 [(5)] (4) In any proceeding under subdivision (2) [,] or (3) [or (4)] of
134 this subsection concerning a personnel action taken or threatened
135 against any state or quasi-public agency employee or any employee of
136 a large state contractor, which personnel action occurs not later than
137 [one year] two years after the employee first transmits facts and
138 information concerning a matter under subsection (a) of this section or
139 subdivision (1) of this subsection to the Auditors of Public Accounts,
140 [or] the Attorney General or an employee of a state agency, quasi-
141 public agency, large state contractor or appointing authority, as
142 applicable, there shall be a rebuttable presumption that the personnel
143 action is in retaliation for the action taken by the employee under
144 subsection (a) of this section or subdivision (1) of this subsection.

145 [(6)] (5) If a state officer or employee, as defined in section 4-141, a
146 quasi-public agency officer or employee, an officer or employee of a
147 large state contractor or an appointing authority takes or threatens to
148 take any action to impede, fail to renew or cancel a contract between a
149 state agency and a large state contractor, or between a large state
150 contractor and its subcontractor, in retaliation for the disclosure of
151 information pursuant to subsection (a) of this section or subdivision (1)
152 of this subsection to any agency listed in subdivision (1) of this
153 subsection, such affected agency, contractor or subcontractor may, not
154 later than ninety days after learning of such action, threat or failure to

155 renew, bring a civil action in the superior court for the judicial district
156 of Hartford to recover damages, attorney's fees and costs.

157 (c) Any employee of a state or quasi-public agency or large state
158 contractor, who is found by the Auditors of Public Accounts, the
159 Attorney General, a human rights referee or the Employees' Review
160 Board to have knowingly and maliciously made false charges under
161 subsection (a) of this section, shall be subject to disciplinary action by
162 such employee's appointing authority up to and including dismissal.
163 In the case of a state or quasi-public agency employee, such action
164 shall be subject to appeal to the Employees' Review Board in
165 accordance with section 5-202, or in the case of state or quasi-public
166 agency employees included in collective bargaining contracts, the
167 procedure provided by such contracts.

168 (d) On or before September first, annually, the Auditors of Public
169 Accounts and the Attorney General shall submit, in accordance with
170 the provisions of section 11-4a, to the clerk of each house of the
171 General Assembly a joint report indicating the number of matters for
172 each agency or large state contractor for which facts and information
173 were transmitted to the auditors pursuant to this section during the
174 preceding state fiscal year, [and the] a description of the type of
175 allegations made, the date each such matter was referred to the
176 auditors and the status and disposition of each such matter, including
177 whether the allegation has been substantiated in whole or in part and
178 whether the agency or large state contractor has attempted to take any
179 corrective action.

180 (e) Each contract between a state or quasi-public agency and a large
181 state contractor shall provide that, if an officer, employee or
182 appointing authority of a large state contractor takes or threatens to
183 take any personnel action against any employee of the contractor in
184 retaliation for such employee's disclosure of information to any
185 employee of the contracting state or quasi-public agency or the
186 Auditors of Public Accounts or the Attorney General under the
187 provisions of subsection (a) or subdivision (1) of subsection (b) of this

188 section, the contractor shall be liable for a civil penalty of not more
189 than five thousand dollars for each offense, up to a maximum of
190 twenty per cent of the value of the contract. Each violation shall be a
191 separate and distinct offense and in the case of a continuing violation
192 each calendar day's continuance of the violation shall be deemed to be
193 a separate and distinct offense. The executive head of the state or
194 quasi-public agency may request the Attorney General to bring a civil
195 action in the superior court for the judicial district of Hartford to seek
196 imposition and recovery of such civil penalty.

197 (f) Each state agency or quasi-public agency shall post a notice of the
198 provisions of this section relating to state employees and quasi-public
199 agency employees in a conspicuous place that is readily available for
200 viewing by employees of such agency or quasi-public agency. Each
201 large state contractor shall post a notice of the provisions of this section
202 relating to large state contractors in a conspicuous place which is
203 readily available for viewing by the employees of the contractor.

204 (g) No person who, in good faith, discloses information [to the
205 Auditors of Public Accounts or the Attorney General] in accordance
206 with the provisions of this section shall be liable for any civil damages
207 resulting from such good faith disclosure.

208 (h) As used in this section:

209 (1) "Large state contract" means a contract between an entity and a
210 state or quasi-public agency, having a value of five million dollars or
211 more; and

212 (2) "Large state contractor" means an entity that has entered into a
213 large state contract with a state or quasi-public agency.

214 Sec. 2. (NEW) (*Effective October 1, 2010*) The Comptroller shall post
215 on the Comptroller's Internet web site the name and address of all
216 large state contractors. For purposes of this section, "large state
217 contractor" has the same meaning as in section 4-61dd of the general
218 statutes, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2010</i>	4-61dd
Sec. 2	<i>October 1, 2010</i>	New section

PRI *Joint Favorable Subst. C/R* GAE

GAE *Joint Favorable*